

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

GEORGE RAND RAUCH,

Petitioner,

V.

WASHINGTON DEPARTMENT OF CORRECTIONS,

Respondent.

Case No. C07-5548RJB-KLS

**REPORT AND
RECOMMENDATION TO DENY
APPLICATION TO PROCEED
*IN FORMA PAUPERIS***

Noted for November 23, 2007

This case has been referred to Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Petitioner is an inmate at the Stafford Creek Corrections Center, located at Aberdeen, Washington. He has filed a petition for writ of *habeas corpus* pursuant to 28 U.S.C. § 2254 and an application to proceed *in forma pauperis*. (Dkt. #1). Because petitioner appears to have sufficient funds with which to pay the \$5.00 Court filing fee, the undersigned recommends the Court deny the application.

DISCUSSION

The Court may permit indigent litigants to proceed *in forma pauperis* upon completion of a proper

1 affidavit of indigency. *See* 28 U.S.C. § 1915(a). However, the Court has broad discretion in denying an
 2 application to proceed *in forma pauperis*. Weller v. Dickson, 314 F.2d 598 (9th Cir. 1963), *cert. denied*,
 3 375 U.S. 845 (1963).

4 Several district courts have ruled that denial of *in forma pauperis* status is not unreasonable when
 5 a prisoner is able to pay the initial expenses required to commence a lawsuit. *See* Temple v. Ellerthorpe,
 6 586 F.Supp. 848 (D.R.I. 1984); Braden v. Estelle, 428 F.Supp. 595 (S.D.Tex. 1977); U.S. ex rel. Irons v.
 7 Com. of Pa., 407 F.Supp. 746 (M.D.Pa. 1976); Shimabuku v. Britton, 357 F.Supp. 825 (D.Kan. 1973),
 8 *aff'd*, 503 F.2d 38 (10th Cir. 1974); Ward v. Werner, 61 F.R.D. 639 (M.D.Pa. 1974).

9 By requesting the Court to proceed *in forma pauperis*, petitioner is asking the government to incur
 10 the filing fee because he allegedly is unable to afford the costs necessary to proceed with his petition for
 11 *habeas corpus*. The prison trust account statement petitioner submitted with his application indicates he
 12 had a starting average spendable balance of \$39.96 on March 18, 2007, and an ending average spendable
 13 balance of \$36.54 on September 18, 2007. (Dkt. #1). That statement also shows he has received a prison
 14 gratuity of \$36.00 in mid-July 2007, \$41.40 in mid-August 2007 and \$47.52 in mid-September 2007.

15 The undersigned recognizes that the funds to which petitioner has access are not great. However,
 16 given the fact that a prisoner's basic needs are provided for while incarcerated, and the minimal filing fee
 17 required to proceed with this action (\$5.00), it is not unreasonable to expect petitioner to pay that fee from
 18 those funds.

19 CONCLUSION

20 Because it is reasonable to expect petitioner to incur the costs to proceed with his petition, the
 21 undersigned recommends that the Court deny his application to proceed *in forma pauperis*. Accordingly,
 22 the undersigned also recommends that the Court order petitioner to pay the required filing fee **within**
 23 **thirty (30) days** of the Court's order.

24 Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 72(b),
 25 the parties shall have ten (10) days from service of this Report and Recommendation to file written
 26 objections thereto. See also Fed.R.Civ.P. 6. Failure to file objections will result in a waiver of those
 27 objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit
 28 imposed by Fed. R. Civ. P. 72(b), the clerk is directed set this matter for consideration on **November 23**,

1 **2007**, as noted in the caption.

2 Dated this 1st day of November, 2007.

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Karen L. Strombom
United States Magistrate Judge